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8 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against: Case No. 1D 2002 63012

11 BYRON M. THOMPSON, PT
12 6321 Lynch Canyon Road
Lake Isabella, CA 93240

A C C U S A T I O N

13 Physical Therapist No. PT 22397

14 Respondent.
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17 Complainant alleges:

18 **PARTIES**

19 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his
20 official capacity as the Executive Officer of the Physical Therapy Board of California,
21 Department of Consumer Affairs.

22 2. On or about April 7, 1997, the Physical Therapy Board of California
23 issued Physical Therapist Number PT 22397 to Byron M. Thompson, PT (Respondent). The
24 Physical Therapist was in full force and effect at all times relevant to the charges brought herein
25 and will expire on January 31, 2005, unless renewed.

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JURISDICTION

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3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws.

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All section references are to the Business and Professions Code unless otherwise indicated.

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4. Section 2609 of the Code states:

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The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

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5. Section 2660 of the Code states:

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The board may, after the conduct of appropriate proceedings under the

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Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose

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probationary conditions upon, or issue subject to terms and conditions any license, certificate, or

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approval issued under this chapter for any of the following causes:

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(a) Advertising in violation of Section 17500.

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(b) Fraud in the procurement of any license under this chapter.

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(c) Procuring or aiding or offering to procure or aid in criminal abortion.

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(d) Conviction of a crime which substantially relates to the qualifications,

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functions, or duties of a physical therapist. The record of conviction or a certified

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copy thereof shall be conclusive evidence of that conviction.

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(e) Impersonating or acting as a proxy for an applicant in any examination

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given under this chapter.

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(f) Habitual intemperance.

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(g) Addiction to the excessive use of any habit-forming drug.

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(h) Gross negligence in his or her practice as a physical therapist.

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(i) Conviction of a violation of any of the provisions of this chapter or of

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1 the State Medical Practice Act, or violating, or attempting to violate, directly or
2 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
3 provision or term of this chapter or of the State Medical Practice Act.

4 (j) The aiding or abetting of any person to violate this chapter or any
5 regulations duly adopted under this chapter.

6 (k) The aiding or abetting of any person to engage in the unlawful
7 practice of physical therapy.

8 (l) The commission of any fraudulent, dishonest, or corrupt act which is
9 substantially related to the qualifications, functions, or duties of a physical
10 therapist.

11 (m) Except for good cause, the knowing failure to protect patients by
12 failing to follow infection control guidelines of the board, thereby risking
13 transmission of blood-borne infectious diseases from licensee to patient, from
14 patient to patient, and from patient to licensee. In administering this subdivision,
15 the board shall consider referencing the standards, regulations, and guidelines of
16 the State Department of Health Services developed pursuant to Section 1250.11
17 of the Health and Safety Code and the standards, regulations, and guidelines
18 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1
19 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing
20 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health
21 care settings. As necessary, the board shall consult with the Medical Board of
22 California, the California Board of Podiatric Medicine, the Board of Dental
23 Examiners of California, the Board of Registered Nursing, and the Board of
24 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
25 consistency in the implementation of this subdivision.

26 The board shall seek to ensure that licensees are informed of the responsibility of
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licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

6. Section 2660.1 of the Code states:

A patient, client, or customer of a licentiate under this chapter is conclusively presumed to be incapable of giving free, full, and informed consent to any sexual activity which is a violation of Section 726.

7. Section 726 of the Code states:

AThe commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

AThis section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.@

8. Section 2661.5 of the Code states:

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge,

1 the administrative law judge shall not increase the amount of the assessed costs
2 specified in the proposed decision.

3 (c) When the payment directed in an order for payment of costs is not
4 made by the licensee, the board may enforce the order of payment by bringing an
5 action in any appropriate court. This right of enforcement shall be in addition to
6 any other rights the board may have as to any licensee directed to pay costs.

7 (d) In any judicial action for the recovery of costs, proof of the board's
8 decision shall be conclusive proof of the validity of the order of payment and the
9 terms for payment.

10 (e) (1) Except as provided in paragraph (2), the board shall not renew
11 or reinstate the license or approval of any person who has failed to pay all
12 of the costs ordered under this section.

13 (2) Notwithstanding paragraph (1), the board may, in its
14 discretion, conditionally renew or reinstate for a maximum of one year the
15 license or approval of any person who demonstrates financial hardship and
16 who enters into a formal agreement with the board to reimburse the board
17 within that one year period for those unpaid costs.

18 (f) All costs recovered under this section shall be deposited in the
19 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
20 costs are actually recovered or the previous fiscal year, as the board may direct.

21 9. Section 2620.7 of the Code states in relevant part:

22 AA physical therapist shall document his or her evaluation, goals, treatment, plan,
23 and summary of treatment in the patient record.@

24 10. Section 125 of the Code states:

25 AAny person, licensed under the provisions of Division 1 (commencing with
26 Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing

1 with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions
2 of this code applicable to him or her, who conspires with a person not so licensed to
3 violate any provision of this code, or who, with intent to aid or assist that person in
4 violating those provisions does either of the following:

5 A(a) Allows his or her license to be used by that person.

6 A(b) Acts as his or her agent or partner. @

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8 FIRST CAUSE FOR DISCIPLINE

9 (Sexual Misconduct with Patient)

10 [Bus. & Prof. Code Section 726]

11 11. Respondent is subject to disciplinary action under section 726 of the Code
12 in that respondent engaged in improper sexual conduct with a patient. The circumstances are as

13 follows:

14 12. On or about January 17, 2002, respondent was treating patient M.L.S.¹, a
15 married, adult female, who had previously suffered torn muscles and/or ligaments in her knee.
16 Respondent treated the patient with massage and whirlpool bath treatments, although these
17 treatments and the medical indications therefore were not documented in the patient=s record.
18 During treatment of the patient at Kern Valley Health Care, the patient engaged in provocative
19 and flirtatious behavior with respondent, removing her gown while wearing nothing underneath,
20 and placing respondent=s hand on her breast. Thereafter, on or about January 19, 2002, patient
21 MLS grabbed respondent=s hand and placed it between her legs. Respondent failed to report
22 either incident to his superiors, nor did he document the events, nor refer the patient to another
23 therapist for further treatment in order to avoid further inappropriate conduct. During treatment
24 on or about January 21, 2002, respondent hugged the patient and told her she was beautiful. The
25 patient requested that respondent kiss her. Respondent initially hesitated, then complied with the
26 patient=s request. Thereafter, respondent continued to treat patient MLS until on or about

27 1. The full identity of this patient will be revealed to respondent in discovery. Her name is abbreviated here, however, to protect patient confidentiality in this public document.

1 January 28, 2002, when respondent referred all further physical therapy for this patient to
2 physical therapist assistant (PTA) Jeffrey Dale and Physical Therapy Aide Patricia Deegan.

3 SECOND CAUSE FOR DISCIPLINE
4 (Aiding and Abetting the Unlicensed Practice of Physical Therapy)
5 [Bus. & Prof. Code Section 2660 (j)]

6 13. Respondent is subject to disciplinary action under section 2660 (j) of the
7 Code in that respondent assigned physical therapy tasks to a physical therapy aide that are only
8 appropriate for a licensed physical therapist to perform. The circumstances are as follows:

9 14. On or about January 28, 2002, respondent assigned the treatment of
10 patient MLS to Physical Therapy Aide Patricia Deegan. Respondent failed to document
11 assignments and/or subsequent treatment of the patient by this individual, in violation of Title
12 16, Div. 13.2, Article 6, section 1399. That on January 30, 2002, February 1, 2002, February 4,
13 2002 and February 6, 2002 respondent failed to provide direct patient care to MLS and failed to
14 document in the patients record those tasks that were rendered by the Physical Therapy Aide,
15 Patricia Deegan. The respondent also violated this section by assigning joint mobilization and
16 myofascial release to the Physical Therapy Aide, Patricia Deegan, which are not tasks that can be
17 safely and effectively be performed by a physical therapy aide.

18 THIRD CAUSE FOR DISCIPLINE
19 (Failure to Document Treatment in Patient Record)
20 [Bus. & Prof. Code Section 2620.7]

21 15. Complainant realleges paragraphs twelve and fourteen, above, and
22 incorporates them by reference as if fully set forth herein at this point.

23 16. Respondent is subject to disciplinary action under section 2620.7 of the
24 Code, in that respondent failed to document whirlpool treatments and/or massage for patient
25 MLS in her patient record and failed to document treatment provided by Physical Therapy Aide
26 Deegan to patient MLS at respondent=s direction.

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15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein
17 alleged, and that following the hearing, the Physical Therapy Board of California issue a
18 decision:

19 1. Revoking or suspending Physical Therapist Number PT 22397, issued to
20 Byron M. Thompson, PT;

21 2. Ordering Byron M. Thompson, PT to pay the Physical Therapy Board of
22 California the reasonable costs of the investigation and enforcement of this case, pursuant to
23 Business and Professions Code section 2661.5;

24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: May 8, 2003

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SMB3/3/03

Original signed by Steven K. Hartzell
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

